

109TH CONGRESS
1ST SESSION

H. R. 4471

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act, so as to enact the “Fair and Responsible Lending Act;” to provide for definitions; to provide for prohibited practices and limitations relating to high-cost home loans; to provide for prohibited practices and limitations relating to home loans; to provide for penalties and remedies and enforcement; to provide for corrections of certain unintentional violations; to provide for coordination with state laws; to provide for related matters; to provide for consumer counseling requirements; to expand housing counseling opportunities; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2005

Mr. CLAY introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act, so as to enact the “Fair and Responsible Lending Act;” to provide for definitions; to provide for prohibited practices and limitations relating to high-cost home loans; to provide for prohibited practices and limitations relating to home loans; to provide for penalties and remedies and enforcement; to provide for corrections of certain unintentional violations; to provide for coordination with state laws; to provide for related matters; to provide

for consumer counseling requirements; to expand housing counseling opportunities; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair and Responsible
 5 Lending Act.”.

6 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.
 Sec. 2. Table of contents.

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1 **TITLE I—HIGH-COST LOANS**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Uniform National
4 Mortgage Lending Standards Act”.

5 **SEC. 102. DEFINITIONS RELATING TO HIGH-COST HOME**
6 **LOANS.**

7 (a) HIGH-COST HOME LOANS DEFINED.—Section
8 103(aa) of the Truth in Lending Act (15 U.S.C.
9 1602(aa)(1)) is amended—

10 (1) by striking all that precedes paragraph (2)
11 and inserting the following:

12 “(aa) HIGH-COST HOME LOAN DEFINED.—

13 “(1) IN GENERAL.—The term ‘high-cost home
14 loan’ means a consumer credit transaction that is se-
15 cured by the consumer’s principal dwelling, other
16 than a reverse mortgage transaction, if any of the
17 following apply with respect to such consumer credit
18 transaction:

19 “(A) The transaction is secured by a first
20 mortgage on the consumer’s principal dwelling
21 and the annual percentage rate on the credit, at
22 consummation of the transaction, will exceed by
23 more than 8 percentage points the yield on
24 Treasury securities having comparable periods
25 of maturity on the 15th day of the month im-

1 mediately preceding the month in which the ap-
2 plication for the extension of credit is received
3 by the creditor.

4 “(B) The transaction is secured by a jun-
5 ior or subordinate mortgage on the consumer’s
6 principal dwelling and the annual percentage
7 rate on the credit, at consummation of the
8 transaction, will exceed by more than 10 per-
9 centage points the yield on Treasury securities
10 having comparable periods of maturity on the
11 15th day of the month immediately preceding
12 the month in which the application for the ex-
13 tension of credit is received by the creditor.

14 “(C) The total loan amount exceeds
15 \$50,000 and total points and fees payable on
16 the transaction will exceed 5 percent of the
17 total loan amount.

18 “(D) The total loan amount is \$50,000 or
19 less and total points and fees payable on the
20 transaction will exceed 7 percent of the total
21 loan amount.

22 “(E) For purposes of computing the an-
23 nual percentage rate for this subsection, intro-
24 ductory rate shall be not taken into account.”;
25 and

1 (2) in paragraph (2)(B)(i), by striking “that”
2 and inserting “than”.

3 (b) POINTS AND FEES DEFINED.—

4 (1) IN GENERAL.—Section 103(aa) of the
5 Truth in Lending Act (15 U.S.C. 1602(aa)) is
6 amended—

7 (A) by striking paragraph (3);

8 (B) by striking paragraph (4) and insert-
9 ing the following new paragraph:

10 “(3) POINTS AND FEES DEFINED.—

11 “(A) IN GENERAL.—For purposes of sub-
12 paragraphs (C) and (D) of paragraph (1), the
13 term ‘points and fees’ includes—

14 “(i) all items included in the finance
15 charge, except interest or the time-price
16 differential;

17 “(ii) all compensation paid directly to
18 mortgage brokers;

19 “(iii) all compensation paid indirectly
20 by a creditor to mortgage brokers, pro-
21 vided, however, indirect compensation not
22 in excess of 2 percent of the total loan
23 amount may be excluded if the new loan
24 does not refinance a previous loan that was
25 consummated within the prior 12 months

1 and that was originated by the same cred-
2 itor;

3 “(iv) each of the charges listed in sec-
4 tion 106(e), except an escrow for future
5 payment of taxes or insurance, unless—

6 “(I) the charge is bona fide, and
7 reasonable;

8 “(II) the creditor receives no di-
9 rect compensation; and

10 “(III) the charge is paid to a
11 third party that is not under the con-
12 trol of or controlled by the creditor;
13 and

14 “(v) all prepayment fees or penalties
15 that are incurred by the consumer on the
16 previous loan if the new loan refinances a
17 previous loan currently held by the same
18 creditor or an affiliate of the creditor, un-
19 less the loan is held in a fiduciary or serv-
20 icing capacity only.”.

21 (2) CALCULATION OF POINTS AND FEES FOR
22 OPEN-END LOANS.—Section 103(aa) of the Truth in
23 Lending Act (15 U.S.C. 1602(aa)) is amended—

24 (A) by redesignating paragraph (5) as
25 paragraph (6); and

1 (B) by inserting after paragraph (3), as
2 amended by paragraph (1) above, the following
3 new paragraph:

4 “(4) CALCULATION OF POINTS AND FEES FOR
5 OPEN-END LOANS.—In the case of open-end loans,
6 points and fees shall be calculated, for purposes of
7 this section and section 129, by adding the total
8 points and fees known at or before closing, plus the
9 minimum additional fees the consumer would be re-
10 quired to pay to draw down an amount equal to the
11 total credit line.”.

12 (3) EXCLUSION OF BONA FIDE DISCOUNT
13 POINTS.—Section 103(aa) of the Truth in Lending
14 Act (15 U.S.C. 1602(aa)) is amended by inserting
15 after paragraph (4), as amended by paragraph (2)
16 above, the following new paragraph:

17 “(5) EXCLUSION OF BONA FIDE DISCOUNT
18 POINTS.—

19 “(A) IN GENERAL.—Not more than 2 bona
20 fide loan discount points shall be excluded from
21 determining the amounts of points and fees
22 with respect to a high-cost home loan for pur-
23 poses of subsection (aa), but only if the interest
24 rate from which the loan’s interest rate will be
25 discounted does not exceed by more than 3 per-

1 centage points the required net yield for a 90-
2 day standard mandatory delivery commitment
3 for a reasonably comparable loan from either
4 the Federal National Mortgage Association or
5 the Federal Home Loan Mortgage Corporation,
6 whichever is greater.

7 “(B) DEFINITION.—For purposes of para-
8 graph (1), the term ‘bona fide discount points’
9 means loan discount points which are knowingly
10 paid by the consumer to a creditor for the pur-
11 pose of reducing, and which in fact result in a
12 bona fide reduction of, the interest rate or time-
13 price differential applicable to the loan.

14 “(C) EXCEPTION FOR INTEREST RATE RE-
15 DUCTIONS INCONSISTENT WITH INDUSTRY
16 NORMS.—Paragraph (1) shall not apply to dis-
17 count points used to purchase an interest rate
18 reduction unless the amount of the interest rate
19 reduction purchased is reasonably consistent
20 with established industry norms and practices
21 for secondary mortgage market transactions.”.

22 (c) HOME LOAN DEFINED.—Section 103 of the
23 Truth in Lending Act (15 U.S.C. 1602) is amended by
24 adding at the end the following subsection:

1 “(cc) the term ‘home loan’ means any consumer cred-
2 it transaction that is secured by a dwelling that is, or upon
3 the consummation of the transaction is intended to be, oc-
4 cupied by the consumer as his principal dwelling.”.

5 (d) TECHNICAL AND CONFORMING AMENDMENT.—

6 (1) Paragraph (2) of section 103(aa) of the
7 Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is
8 amended by striking “specified in paragraph (1)(A)”
9 and inserting “specified in subparagraph (A) or (B)
10 of paragraph (1)”.

11 (2) Subchapter I of chapter 41 of title 15 of the
12 United States Code is amended by striking “a mort-
13 gage referred to in this subsection” and “a mortgage
14 referred to in section 129(aa)” each place such term
15 appears and inserting “a high-cost home loan” in lieu
16 thereof.

17 (3) The title of section 129 of the Truth in
18 Lending Act (15 U.S.C. 1639) is amended by strik-
19 ing “Requirements for Certain Mortgages” and in-
20 serting “Requirements for High-Cost Home Loans”.

21 **SEC. 103. AMENDMENTS TO REQUIREMENTS FOR HIGH-**
22 **COST HOME LOANS.**

23 (a) PREPAYMENT PENALTIES.—Subsection (c) of
24 section 129 of the Truth in Lending Act (15 U.S.C.
25 1639(c)) is amended to read as follows:

1 “(c) [Repealed]”.

2 (b) BALLOON PAYMENTS.—Subsection (e) of section
3 129 of the Truth in Lending Act (15 U.S.C. 1639(e)) is
4 amended—

5 (1) by striking “PAYMENTS.—A mortgage re-
6 ferred to in section 103(aa) of this title” and insert-
7 ing “PAYMENTS.—

8 “(1) IN GENERAL.—A high-cost home loan”;

9 (2) by striking “having a term of less than 5
10 years”; and

11 (3) by adding at the end the following new
12 paragraphs:

13 “(2) EXCEPTION.—

14 “(A) IN GENERAL.—Paragraph (1) shall
15 not apply—

16 “(i) when the payment schedule is ad-
17 justed to account for the seasonal or irreg-
18 ular income of the consumer;

19 “(ii) if the purpose of the loan is a
20 bridge loan; or

21 “(iii) if the unamortized amount is
22 the result of the creditor’s deferral of the
23 consumer’s delinquent payments and fees
24 relating to delinquent payments.

1 “(B) BRIDGE LOAN DEFINED.—For pur-
2 poses of this subsection, the term ‘bridge loan’
3 means a loan that—

4 “(i) has a period to maturity of 12
5 months or less; and

6 “(ii) is made in connection with the
7 acquisition or construction of a dwelling.

8 “(3) NOTICE REQUIRED.—A creditor that offers
9 a high-cost home loan having a balloon payment
10 term that, in accordance with paragraph (2), is not
11 subject to paragraph (1) shall clearly disclose to the
12 consumer that—

13 “(A) the loan contains such a term;

14 “(B) the balloon payment amount that will
15 be owed by the consumer on the loan maturity
16 date will be equal to the initial principal loan
17 amount, plus interest and costs that may be
18 due, minus any principal payments that may
19 have been made over the term of the loan; and

20 “(C) balloon payments are permissible
21 under the circumstances described in paragraph
22 (2).”.

23 (c) NEGATIVE AMORTIZATION.—Subsection (f) of
24 section 129 of the Truth in Lending Act (15 U.S.C.
25 1639(f)) is amended—

1 (1) by striking “AMORTIZATION.—A mortgage
2 referred to in section 103(aa) of this title” and in-
3 sserting “AMORTIZATION.—

4 “(1) IN GENERAL.—A high-cost home loan”;
5 and

6 (2) by adding at the end the following new
7 paragraph:

8 “(2) EXCEPTION FOR PERIOD OF FORBEAR-
9 ANCE.—Paragraph (1) shall not apply with respect
10 to negative amortization resulting from periods of
11 temporary forbearance allowed by the creditor.”.

12 (d) FINANCING OF POINTS OR FEES.—Section 129
13 of the Truth in Lending Act (15 U.S.C. 1639) is amended
14 by adding at the end the following new subsection:

15 “(m) RESTRICTIONS ON FINANCING OF POINTS OR
16 FEES.—No creditor may directly or indirectly finance, in
17 connection with any high-cost home loan, any of the fol-
18 lowing:

19 “(1) Any prepayment fee or penalty payable by
20 the consumer in a refinancing transaction if the
21 creditor or an affiliate of the creditor is the holder
22 of the note being refinanced in other than a fidu-
23 ciary or servicing capacity.

24 “(2) Any points or fees in excess of 3 percent
25 of the total loan amount.”.

1 (e) PROHIBITION ON EVASIONS.—Section 129 of the
2 Truth in Lending Act (15 U.S.C. 1639) is amended by
3 inserting after subsection (n) (as added by section 104(a)
4 of this Act) the following new subsection:

5 “(o) PROHIBITION ON EVASIONS.—A creditor may
6 not take any action in connection with a high-cost home
7 loan with the intent of evading provisions of this title.”.

8 (f) NO ENCOURAGEMENT OF DEFAULT ON PRIOR
9 EXISTING LOAN.—Section 129 of the Truth in Lending
10 Act (15 U.S.C. 1639) is amended by inserting after sub-
11 section (o) (as added by subsection (e) of this section) the
12 following new subsection:

13 “(p) NO ENCOURAGEMENT OF DEFAULT.—No cred-
14 itor shall recommend or encourage default on an existing
15 loan or other debt prior to and in connection with the clos-
16 ing or planned closing of a high-cost home loan that refi-
17 nances all or any portion of such existing loan or debt.”.

18 (g) ABILITY TO REPAY.—Subsection (h) of section
19 129 of the Truth in Lending Act (15 U.S.C. 1639(h)) is
20 amended to read as follows:

21 “(1) IN GENERAL.—A creditor may not extend
22 credit to a consumer under a high-cost home loan
23 unless a reasonable creditor would believe at the
24 time the loan is closed that the consumer or con-
25 sumers that are residing or will reside in the dwell-

1 ing subject to the loan will be able to make the
2 scheduled payments associated with the loan, based
3 upon a consideration of the consumers' current and
4 expected income, current obligations, employment
5 status, and other financial resources, other than eq-
6 uity in the dwelling.

7 “(2) PRESUMPTION OF ABILITY.—For purposes
8 of this subsection, there shall be a rebuttable pre-
9 sumption that a consumer is able to make the sched-
10 uled payments to repay the obligation if, at the time
11 the extension of credit is approved, the consumer's
12 total monthly debts due on outstanding obligations,
13 including amounts under the high-cost home loan,
14 do not exceed 50 percent of his or her monthly gross
15 income as verified by: (a) the consumer's credit ap-
16 plication and a credit report; and (b) tax returns,
17 payroll receipts, or other third-party income
18 verification.”.

19 (h) LIMITATIONS ON REFINANCING.—Section 129 of
20 the Truth in Lending Act (15 U.S.C. 1639) is amended
21 by inserting after subsection (p) (as added by subsection
22 (f) of this section) the following new subsection:

23 “(q) LIMITATIONS ON REFINANCING.—

1 “(1) IN GENERAL.—No creditor shall knowingly
2 or intentionally engage in the unfair act or practice
3 of loan flipping.

4 “(2) FLIPPING DEFINED.—For purposes of this
5 subsection, the term ‘loan flipping’ means the mak-
6 ing of a high-cost home loan to a consumer which
7 refinances an existing home loan that was con-
8 summated within the prior 36 months when the new
9 high-cost home loan does not have a reasonable tan-
10 gible net benefit to the consumer, considering all of
11 the material circumstances known to the creditor,
12 including but not limited to, the terms of both the
13 new and the refinanced loans or credit, the cost of
14 the new loan or credit, and the consumer’s known
15 economic and non-economic circumstances, the con-
16 sumer’s stated purpose of and desire for the loan,
17 and the benefits the consumer states that he or she
18 will receive from the refinancing.

19 “(3) SAFE HARBORS.—A high-cost home loan
20 shall be presumed to provide a reasonable tangible
21 net benefit to the consumer if any of the following
22 factors applies to the new loan:

23 “(A) The interest rate on the new fixed-
24 rate high-cost home loan is lower than the in-
25 terest rate on the fixed-rate refinanced loan and

1 it will take 4 years or less for the consumer to
2 recoup the costs of the points and fees, and
3 other closing costs that are required to be paid
4 by the consumer on the new high-cost home
5 loan through savings resulting from the lower
6 interest rate.

7 “(B) The creditor makes a good-faith de-
8 termination that the consumer’s monthly pay-
9 ment of principal and interest required to be
10 paid on the new high-cost home loan is a min-
11 imum of 15 percent less than the consolidated
12 total of all minimum monthly payments on the
13 obligations being financed, and it will take 4
14 years or less for the consumer to recoup the
15 costs of the points and fees and other closing
16 costs that are required to be paid by the con-
17 sumer on the new high-cost home loan through
18 savings resulting from the total reduction in
19 payments.

20 “(C) The consumer provides written con-
21 firmation to the creditor from an independent
22 housing or credit counselor approved by the
23 United States Department of Housing and
24 Urban Development, or by any State housing
25 authority, which states that the consumer has

1 received counseling regarding the advisability of
2 refinancing the existing loan with the high-cost
3 home loan being offered to the consumer by the
4 creditor.

5 “(D) The refinancing is necessary under,
6 or in response to, any order or judgment of a
7 court of competent jurisdiction, or to avoid a
8 filed foreclosure action.

9 “(4) RULE OF CONSTRUCTION.—No negative
10 inference may be drawn from the absence of any fac-
11 tor or circumstance described in any subparagraph
12 of paragraph (2) with regard to any high-cost home
13 loan so as to create a presumption of a violation of
14 this subsection with regard to such high-cost home
15 loan by reason of such absence.

16 “(5) LIMITATION.—Notwithstanding section
17 130 or any other provision of law, any suit instituted
18 by a consumer who alleges that a creditor violated
19 this section shall be brought only in an individual
20 action, and the presiding judge may, in the judge’s
21 discretion, allow reasonable attorneys’ fees to be
22 taxed as a part of the court costs and payable by the
23 losing party, upon a finding by the court that:

24 “(A) The party charged with the violation
25 has willfully engaged in the act or practice, and

1 there was an unwarranted refusal by such party
2 to fully resolve the matter which constitutes the
3 basis of such suit; or

4 “(B) The party instituting the action
5 knew, or should have known, that the action
6 was frivolous and malicious.

7 “(6) REGULATIONS.—The Board may, by regu-
8 lation or order, add to, delete, or modify the factors
9 listed in paragraph (3) of this subsection.”.

10 (i) NO CALL PROVISION.—Section 129 of the Truth
11 in Lending Act (15 U.S.C. 1639) is amended by inserting
12 after subsection (q) (as added by subsection (h) of this
13 section) the following new subsection:

14 “(r) NO CALL PROVISION.—No high-cost home loan
15 may contain a provision which permits the creditor, in its
16 sole discretion, to accelerate the indebtedness. This provi-
17 sion shall not apply when repayment of the loan has been
18 accelerated by default, pursuant to a due-on-sale provi-
19 sion, pursuant to a material violation of some other provi-
20 sion of the loan documents unrelated to the payment
21 schedule, or due to any action or omission by the consumer
22 that adversely affects the creditor’s security interest in the
23 dwelling or any rights of the creditor in such security.”.

24 (j) MODIFICATION AND DEFERRAL FEES PROHIB-
25 ITED.—Section 129 of the Truth in Lending Act (15

1 U.S.C. 1639) is amended by inserting after subsection (r)
2 (as added by subsection (i) of this section) the following
3 new subsection:

4 “(s) MODIFICATION AND DEFERRAL FEES PROHIB-
5 ITED.—

6 “(1) IN GENERAL.—A creditor may not charge
7 a consumer any fee to modify, renew, extend, or
8 amend a high-cost home loan, or to defer any pay-
9 ment due under the terms of such loan, unless the
10 modification, renewal, extension or amendment re-
11 sults in a lower annual percentage rate on the loan
12 for the consumer and then only if the amount of the
13 fee is comparable to fees imposed for similar trans-
14 actions in connection with consumer credit trans-
15 actions that are secured by a consumer’s principal
16 dwelling and are not high-cost home loans.

17 “(2) EXCEPTION FOR CERTAIN WORKOUTS.—
18 The restrictions in paragraph (1) shall not apply in
19 the case of an existing high-cost home loan that is
20 in default or more than 60 days delinquent, if the
21 modification, renewal, extension, or amendment is
22 part of the resolution or workout of the default or
23 delinquency.”.

24 (k) INCREASED INTEREST RATE UPON DEFAULT
25 PROHIBITED.—Section 129 of the Truth in Lending Act

1 (15 U.S.C. 1639) is amended by inserting after subsection
2 (s) (as added by subsection (j) of this section) the fol-
3 lowing new subsection:

4 “(t) INCREASED INTEREST RATE UPON DEFAULT
5 PERMITTED FOR VARIABLE-RATE HIGH-COST HOME
6 LOAN.—In the case of a high-cost home loan that is sub-
7 ject to a variable rate of interest, subsection (d) shall not
8 apply to changes in the rate of interest due to any change
9 in the index rate, to the extent the change of interest is
10 not due in any part to a default by the consumer or a
11 permissible acceleration by the creditor.”.

12 (l) PREPAYMENT OF PERIODIC PAYMENTS FROM
13 PROCEEDS PROHIBITED.—Subsection (g) of section 129
14 of the Truth in Lending Act (15 U.S.C. 1639) is amended
15 to read as follows:

16 “(g) PREPAYMENT OF PERIODIC PAYMENTS FROM
17 PROCEEDS PROHIBITED.—No high-cost home loan may
18 include terms under which more than 2 scheduled pay-
19 ments of interest or principal due under such loan may
20 be paid in advance or otherwise deducted from the pro-
21 ceeds of the loan.”.

22 (m) PAYOFF STATEMENTS.—Section 129 of the
23 Truth in Lending Act (15 U.S.C. 1639) is amended by
24 inserting after subsection (t) (as added by subsection (k)
25 of this section) the following new subsection:

1 “(u) PAYOFF STATEMENTS.—

2 “(1) FEES.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), no creditor or servicer may
5 charge a fee for informing or transmitting to
6 any person the balance due to pay off the out-
7 standing balance on a high-cost home loan.

8 “(B) TRANSACTION FEE.—When payoff in-
9 formation referred to in subparagraph (A) is
10 provided by facsimile or electronic transmission,
11 courier service or other expedited means, a
12 creditor or servicer may charge a processing fee
13 to cover the cost of such transmission or service
14 in an amount not to exceed an amount that is
15 comparable to fees imposed for similar services
16 provided in connection with consumer credit
17 transactions that are secured by the consumer’s
18 principal dwelling and are not high-cost home
19 loans.

20 “(C) FEE DISCLOSURE.—Prior to charging
21 a transaction fee as provided in subparagraph
22 (B), a creditor or servicer shall disclose that
23 payoff balances are available for free pursuant
24 to subparagraph (A).

1 “(D) MULTIPLE REQUESTS.—If a creditor
2 or servicer has provided payoff information re-
3 ferred to in subparagraph (A) without charge,
4 other than the transaction fee allowed by sub-
5 paragraph (B), on 4 occasions during a cal-
6 endar year, the creditor or servicer may there-
7 after charge a reasonable fee for providing such
8 information during the remainder of the cal-
9 endar year.

10 “(2) PROMPT DELIVERY.—Payoff balances shall
11 be provided within a reasonable time but in any
12 event no more than 10 business days after receiving
13 a written request by a consumer or a person author-
14 ized by the consumer to obtain such information.”.

15 (n) DISCRETIONARY REGULATORY AUTHORITY OF
16 THE BOARD.—Subsection (l) of section 129 of the Truth
17 in Lending Act (15 U.S.C. 1639(l)) is amended—

18 (1) by striking paragraph (2) and inserting the
19 following new paragraphs:

20 “(2) The Board, by regulation or order, shall
21 prohibit acts or practices in connection with—

22 “(A) mortgage loans that the Board finds
23 to be unfair, deceptive, abusive, or designed to
24 evade the provisions of this section; and

1 “(B) mortgage loans that the Board finds
2 to be associated with abusive lending practices,
3 or that are otherwise not in the interest of the
4 borrower.

5 “(3) Notwithstanding paragraph (2), the Board
6 shall not have authority to adjust or modify the defi-
7 nitions contained in section 103(aa) (15 U.S.C.
8 1602(aa)) of this title.

9 “(4) On a biannual basis, the Board shall hold
10 a hearing to solicit and consider input and rec-
11 ommendations from State Attorneys General and
12 other interested parties on whether new regulations
13 should be prescribed, or new legislation passed to
14 prevent further acts and practices in connection with
15 mortgage loans that are abusive or otherwise not in
16 the interest of the borrower.”.

17 **SEC. 104. AMENDMENTS RELATING TO DISPUTE AND**
18 **ERROR RESOLUTION.**

19 (a) PROHIBITION ON ARBITRATION REQUIRE-
20 MENTS.—Section 129 of the Truth in Lending Act (15
21 U.S.C. 1639) is amended by inserting after subsection (m)
22 (as added by subsection (d) of section 103) the following
23 new subsection:

24 “(n) ARBITRATION.—

1 “(1) IN GENERAL.—A high-cost home loan may
2 not include terms which require arbitration or any
3 other nonjudicial procedure as the method for resolv-
4 ing any controversy or settling any claims arising
5 out of the transaction.

6 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
7 ject to paragraph (3), paragraph (1) shall not be
8 construed as limiting the right of the consumer and
9 the creditor to agree to arbitration or any other non-
10 judicial procedure as the method for resolving any
11 controversy at any time after a dispute or claim
12 under the transaction arises.

13 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
14 TION.—No provision of any high-cost home loan and
15 no other pre-controversy agreement between the con-
16 sumer and the creditor shall be applied or inter-
17 preted so as to bar a consumer from bringing an ac-
18 tion in an appropriate district court of the United
19 States, or any other court of competent jurisdiction,
20 pursuant to section 130 or any other provision of
21 law, for damages or other relief in connection with
22 any alleged violation of this section, any other provi-
23 sion of this title, or any other Federal law, provided
24 that this section does not prohibit a creditor from

1 requiring a consumer to waive or release such rights
2 in connection with the settlement of a dispute.”.

3 (b) CORRECTION OF ERRORS.—Section 130 of the
4 Truth in Lending Act (15 U.S.C. 1640) is amended—

5 (1) by redesignating subsections (d) through (i)
6 as subsections (e) through (j);

7 (2) by adding the following sentence at the end
8 of subsection (b): “This section does not apply to
9 violations of section 129 or section 129A.”;

10 (3) by adding the following sentence at the end
11 of subsection (c): “This section does not apply to
12 violations of section 129 or section 129A.”; and

13 (4) by inserting the following new subsection
14 (d):

15 “(d) CORRECTION OF VIOLATIONS OF REQUIRE-
16 MENTS FOR HIGH-COST HOME LOANS AND HOME
17 LOANS.—

18 “(1) IN GENERAL.—A creditor or assignee shall
19 have no liability under this section or section 108,
20 112, or 125 for any failure to comply with any re-
21 quirement imposed under section 129 or 129A, ex-
22 cept for knowing or intentional violations, if—

23 “(A) before the end of the 45-day period
24 beginning on the date of consummation of a
25 loan, the creditor or assignee notifies the con-

1 sumer of the error and makes appropriate res-
2 stitution to the consumer of any amounts col-
3 lected in error, and takes the necessary action
4 to make all appropriate adjustments to the
5 credit transaction to correct the error, includ-
6 ing, if applicable, that the consumer will not be
7 required to pay an amount in excess of the
8 charge actually disclosed, or the dollar equiva-
9 lent of the annual percentage rate actually dis-
10 closed, whichever is less; or

11 “(B) before the end of the 60-day period
12 beginning on the date an error is discovered,
13 whether pursuant to a final examination report
14 or notice issued under section 108(e) of this
15 title, or through the creditor’s or assignee’s own
16 procedures, or receipt of written notice from the
17 consumer or service upon the creditor or as-
18 signee of the institution of an action, the cred-
19 itor or assignee notifies the consumer of the
20 error, makes appropriate restitution to the con-
21 sumer of any amounts collected in error, takes
22 the necessary action to make all appropriate ad-
23 justments to the credit transaction to correct
24 the error, including, if applicable, that the con-
25 sumer will not be required to pay an amount in

1 excess of the charge actually disclosed, or the
2 dollar equivalent of the annual percentage rate
3 actually disclosed, whichever is less, pays the
4 consumer an error penalty of \$2,000 and the
5 consumer's reasonable attorney's fees, if any,
6 except that no error penalty or attorney's fees
7 shall be assessed if the creditor or assignee dis-
8 covers the error through the creditor's or as-
9 signee's own procedures.

10 “(2) MODIFICATION OF TERMS.—In the case of
11 a high-cost home loan, appropriate restitution for
12 purposes of paragraph (1) above may also include a
13 creditor modifying the terms of the credit trans-
14 action in such a way that the transaction is no
15 longer a high-cost home loan within the meaning of
16 this title.

17 “(3) CONSUMER REMEDY.—If a creditor or as-
18 signee fails to correct the error as provided for above
19 in paragraph (1), the consumer may file an action
20 or proceed with an action already filed.

21 “(4) CONSUMER RESCISSION RIGHT UNAF-
22 FECTED.—This section does not affect a consumer's
23 right to rescind the transaction in accordance with
24 section 125.

1 129 or 129A, not less than \$500 or
2 greater than \$5,000”;

3 (4) by redesignating paragraph (2)(B) as para-
4 graph (2)(B)(i);

5 (5) by inserting “or” at the end of paragraph
6 (2)(B)(i); and

7 (6) by inserting at the end the following:

8 “(ii) in the case of a class action re-
9 lating to violations of sections 129 or
10 129A, such amount as the court may
11 allow, except that as to each member of
12 the class no minimum recovery shall be ap-
13 plicable, and the total recovery under this
14 subparagraph in any class action or series
15 of class actions arising out of the same
16 failure to comply by the same creditor shall
17 not be more than the lesser of \$1,500,000
18 or 1 per centum of the net worth of the
19 creditor.”.

20 (b) CLASS-ACTIONS RELATING TO HIGH-COST HOME
21 LOANS.—Section 130 of the Truth in Lending Act (15
22 U.S.C. 1640) is amended by adding at the end the fol-
23 lowing new subsection:

24 “(j) CLASS ACTIONS RELATING TO HIGH-COST
25 HOME LOANS; KNOWING OR INTENTIONAL VIOLA-

1 TIONS.—In determining the amount of any liability of any
2 person under subsection (a)(2)(B)(ii) for violations of sec-
3 tion 129 in a class action, the court shall consider whether
4 the person knowingly or intentionally violated this part.”.

5 (c) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
6 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
7 Lending Act (15 U.S.C. 1640(e)) is amended—

8 (1) in the first sentence, by striking “Any ac-
9 tion” and inserting “Except as provided in the sub-
10 sequent sentence, any action”;

11 (2) by inserting after the first sentence the fol-
12 lowing new sentence: “Any action under this section
13 with respect to any violation of section 129 or 129A
14 may be brought in any United States district court,
15 or in any other court of competent jurisdiction, be-
16 fore the end of the 2-year period beginning on the
17 date of the occurrence of the violation, unless a
18 shorter time period is herein provided.”.

19 (d) AMENDMENTS RELATING TO LIABILITY OF AS-
20 SIGNEES.—

21 (1) IN GENERAL.—Paragraph (4) of section
22 131(d) of the Truth in Lending Act (15 U.S.C.
23 1641(d)) is amended by striking “mortgage referred
24 to in section 103(aa)” and inserting “high-cost home
25 loan”.

1 (2) RIGHTS UPON ASSIGNMENT OF HIGH-COST
2 HOME LOANS.—Section 131(d) of the Truth in
3 Lending Act (15 U.S.C. 1641(d)) is amended by
4 striking paragraph (1) and inserting the following
5 new paragraph:

6 “(1) IN GENERAL.—A borrower acting only in
7 an individual capacity may assert affirmative claims
8 and any defenses with respect to a high-cost home
9 loan against any subsequent holder or assignee of
10 the high-cost home loan that the borrower could as-
11 sert against the original lender or broker of the loan,
12 provided that this paragraph shall not apply if the
13 purchaser or assignee demonstrates by a preponder-
14 ance of the evidence that it:

15 “(A) has in place at the time of the pur-
16 chase or assignment of the subject loan policies
17 that expressly prohibit its purchase or accept-
18 ance of assignment of any high-cost home
19 loans;

20 “(B) requires by contract that a seller or
21 assignor of home loans represents and warrants
22 to the purchaser or assignee that either—

23 “(i) the seller or assignor will not sell
24 or assign any high-cost home loans to the
25 purchaser or assignee; or

1 “(ii) that the seller or assignor is a
2 beneficiary of a representation and war-
3 ranty from a previous seller or assignor to
4 that effect; and

5 “(C) exercises reasonable due diligence at
6 the time of purchase or assignment of home
7 loans or within a reasonable period of time
8 after the purchase or assignment of the home
9 loans, intended by the purchaser or assignee to
10 prevent the purchaser or assignee from pur-
11 chasing or taking assignment of any high-cost
12 home loans: *Provided, however,* That reasonable
13 due diligence may provide for sampling and
14 shall not require loan by loan review.”.

15 (e) CONFORMING AMENDMENT CONCERNING CON-
16 SUMER’S RIGHT TO RESCIND IN STEERING CASES.—Sec-
17 tion 125(b) of the Truth in Lending Act (15 U.S.C.
18 1635(b)) is amended in the first sentence by inserting “or
19 subsection (d) of section 129A” after “subsection (a) of
20 this section”.

21 **SEC. 106. COORDINATION WITH STATE LAW.**

22 Section 111 of the Truth in Lending Act (15 U.S.C.
23 1610) is amended—

24 (1) by adding at the end the following new sub-
25 section:

1 “(f) HOME LOANS AND HIGH-COST HOME LOANS.—

2 “(1) IN GENERAL.—The provisions of this title
3 shall supersede any provision of the law of any
4 State, whether enacted before, on, or after the effective
5 date of this Act, to the extent that such provision
6 of law attempts, directly or indirectly, to regulate,
7 or has the effect of regulating, mortgage lending
8 activities by or through—

9 “(A) the imposition of a rate limitation, including—
10

11 “(i) limitations or prohibitions in connection with contracts for other business
12 with any such State or any political subdivision of any such State;
13
14

15 “(ii) by making any conduct in connection with any such activities subject to
16 civil or criminal penalties; or
17

18 “(iii) by making activities regulated under real estate, foreclosure, or other
19 laws of such State or political subdivision contingent upon the manner in which
20 mortgage lending activities are conducted;
21
22
23 or

1 “(B) any requirement, including data col-
2 lection, or any limitation, or prohibition per-
3 taining to—

4 “(i) unfair, deceptive or abusive mort-
5 gage lending practices, or

6 “(ii) the subject matters contained in
7 sections 129 and 129A,
8 regardless of whether the consumer credit
9 transaction subject to such requirement, limita-
10 tion, or prohibition is a home loan or high-cost
11 home loan.

12 “(2) DEFINITIONS.—For purposes of this sub-
13 section, the following definitions shall apply:

14 “(A) MORTGAGE LENDING ACTIVITIES.—

15 The term ‘mortgage lending activities’ includes
16 any advertisement, solicitation, offer, negotia-
17 tion, placement, application, processing, under-
18 writing, originating, closing, funding, recording,
19 assignment, purchase, pledge, securitization,
20 holding, servicing, collection, modification, satis-
21 faction, or foreclosure in connection with or
22 arising out of a consumer credit transaction se-
23 cured by a lien against a consumer’s principal
24 dwelling, by or on behalf of a broker, creditor,
25 secured creditor, purchaser, servicer, trustee,

1 certificate or securities holder, or any other per-
2 son or entity that may engage in any of the
3 above enumerated activities and their respective
4 agents, contractors, employees, officers, and di-
5 rectors.

6 “(B) LAW OF ANY STATE.—The term ‘law
7 of any State’ includes any constitutional provi-
8 sion, statute, rule, regulation, or ordinance of
9 any State or any political subdivision of any
10 State, including any State law as to which the
11 Board has made a determination under section
12 123, and any judicial decision or determination
13 rendered in connection therewith.

14 “(C) RATE LIMITATION.—The term ‘rate
15 limitation’ means any requirement, limitation,
16 or prohibition on any mortgage lending activi-
17 ties in connection with a consumer credit trans-
18 action secured by a lien against a consumer’s
19 principal dwelling when the applicability of such
20 requirement, limitation or prohibition is based
21 in whole or in part on whether the actual or
22 contingent, direct or indirect, interest rate,
23 costs, fees, price or finance charges to the con-
24 sumer associated with such consumer credit
25 transaction exceed any particular threshold,

1 however such threshold may be defined, without
2 regard to whether the consumer credit trans-
3 action subject to such requirement, limitation,
4 or prohibition is a high cost home loan.

5 “(3) CLARIFICATION OF PREEMPTION.—Any
6 law of any State preempted under paragraph (1) of
7 this subsection shall, without in any way limiting the
8 effect of paragraph (1) of this subsection, include,
9 but not be limited to, any law of any State that di-
10 rectly or indirectly—

11 “(A) limits a creditor’s ability to extend to
12 a consumer new consumer credit secured by a
13 consumer’s principal dwelling;

14 “(B) limits the rights, claims, defenses, or
15 other remedies at law or equity available to a
16 creditor, secured creditor, servicer, assignee or
17 other direct or indirect holder, and their respec-
18 tive agents or contractors, including without
19 limitation, the right to foreclose on the lien
20 against the consumer’s principal dwelling in re-
21 spect of a consumer’s default under the related
22 mortgage loan documents; or

23 “(C) imposes legal liability on any party
24 for the violations of law by another party by
25 virtue of such first party’s acquisition of any di-

1 rect or indirect right, title or interest in and to,
2 or contractual responsibility for the servicing or
3 administration of, a home loan or high cost
4 home loan.

5 “(4) EXCLUSIONS.—The following laws are ex-
6 pressly excluded from the preemption established
7 under paragraph (1):

8 “(A) Any law of any State prohibiting a
9 creditor or broker from discriminating against
10 any person in making available a consumer
11 credit transaction that is secured by the con-
12 sumer’s principal dwelling because of race,
13 creed, color, religion, age, sex, handicap, mar-
14 ital status, familial status, or national origin.
15 For the purpose of this section, the term ‘dis-
16 criminating’ means engaging in any of the fol-
17 lowing acts in a manner that is arbitrary or un-
18 supported by a reasonable analysis of the lend-
19 ing risks associated with a particular consumer
20 credit transaction:

21 “(i) failing to provide information or
22 services or providing different information
23 or services regarding any aspect of the
24 mortgage lending process, including credit

1 availability, application procedures, or
2 mortgage lending standards;

3 “(ii) discouraging or selectively en-
4 couraging consumer credit transaction ap-
5 plicant with respect to inquiries about or
6 applications for consumer credit;

7 “(iii) refusing to extend consumer
8 credit card or using different standards in
9 determining whether to extend consumer
10 credit;

11 “(iv) varying the terms of consumer
12 credit offered, including the amount, inter-
13 est rate, duration, type, or other terms
14 term or condition of loan;

15 “(v) using different standards to
16 evaluate collateral; and

17 “(vi) treating a consumer differently
18 in servicing a loan or in invoking default
19 remedies.

20 “(B) Any law of any State, not otherwise
21 preempted under Federal law, limiting the rate
22 of interest reflected in the note or other instru-
23 ment evidencing an extension of consumer cred-
24 it secured by a lien against a consumer’s prin-
25 cipal dwelling, to the extent that such law does

1 not require compliance with any law that is oth-
2 erwise preempted under paragraphs (1), (2),
3 and (3) as a condition of contracting for, charg-
4 ing, or collecting any rate of interest otherwise
5 permitted by such law;

6 “(C) Any law of any State requiring the li-
7 censing, registration, or authorization of any
8 person engaged in mortgage-lending activities,
9 except that the law of any State will be pre-
10 empted to the extent that such law conditions
11 the issuance or maintenance of such a license,
12 registration or other authorization, or the au-
13 thority granted thereby, on compliance with any
14 law that is otherwise preempted under para-
15 graphs (1), (2), and (3);

16 “(D) General contract and commercial law
17 to the extent that such law is not otherwise pre-
18 empted under paragraphs (1), (2), and (3);

19 “(E) Torts to the extent that such law is
20 not otherwise preempted under paragraphs (1),
21 (2), and (3);

22 “(F) Real property law to the extent that
23 such law is not otherwise preempted under
24 paragraphs (1), (2), and (3);

1 “(G) Tax law to the extent that such law
2 is not otherwise preempted under paragraphs
3 (1), (2), and (3); and

4 “(H) Criminal law to the extent that such
5 law is not otherwise preempted under para-
6 graphs (1), (2), and (3).

7 “(5) PROMPT DETERMINATION BY BOARD OF
8 GOVERNORS.—

9 “(A) IN GENERAL.—In response to a bona
10 fide request from any person, the Board, or any
11 official or employee of the Board duly author-
12 ized by the Board, shall—

13 “(i) promptly determine whether and
14 to the extent to which the specific law of
15 any State identified in such request is pre-
16 empted by operation of this subsection;
17 and

18 “(ii) cause such determination to be
19 published in the Federal Register.

20 “(B) EFFECT OF PUBLICATION.—The pre-
21 emption provided under this section shall be
22 self-executing, and the publication of a finding
23 or preemption by the Board shall not be re-
24 quired in order for preemption to occur in ac-
25 cordance with the terms of this section.

1 “(6) EFFECT ON PREEMPTION BY OTHER FED-
2 ERAL LAWS.—Nothing in this subsection shall nar-
3 row or limit the extent to which another provision of
4 Federal law preempts or validates any State law to
5 the extent such State law would be preempted or
6 validated in the absence of this subsection.

7 “(7) PROHIBITION ON EVASION.—No State or
8 any political subdivision of a State shall regulate
9 mortgage lending activities with the intent to cir-
10 cumvent or evade the provisions of this title, or in
11 a manner which has the effect of circumventing or
12 evading the provisions of this title.”.

13 (2) in subsection (a)(1), by striking the first
14 sentence and inserting the following new sentence:
15 “Except as provided in subsections (3) and (f), no
16 provision of chapter 1, 2, or 3 shall be construed as
17 annulling, altering, or affecting the laws of any
18 State relating to the disclosure of information in
19 connection with credit transactions, except to the ex-
20 tent that those laws are inconsistent with the provi-
21 sions of this title, and then only to the extent of the
22 inconsistency.”,

23 (3) in subsection (b)—

1 (A) by striking “section 129” the first
 2 place such terms appears and inserting “sub-
 3 section (f) and sections 129 and 129A”; and

4 (B) by inserting “, or 129A” after “section
 5 129” each place such term appears after the
 6 first place; and

7 (4) in subsection (d), by striking “sections 125,
 8 130, and 166” and inserting “subsection (f) and
 9 sections 125, 130, and 166”.

10 **SEC. 107. CLARIFICATION OF STATE ENFORCEMENT AU-**
 11 **THORITY.**

12 Subsection (e) of section 130 of Truth in Lending
 13 Act (15 U.S.C. 1640(e)) (as amended by section 105(d)
 14 of this Act) is amended—

15 (1) by striking “(e) Except as provided in the
 16 subsequent sentence, any action” and inserting “(e)
 17 JURISDICTION; STATUTE OF LIMITATIONS.—

18 “(1) IN GENERAL.—Except as provided in the
 19 subsequent sentence, any action”; and

20 (2) by adding at the end the following new
 21 paragraph:

22 “(2) CLARIFICATION OF PRIMARY ENFORCE-
 23 MENT AUTHORITY WITH RESPECT TO STATE-CHAR-
 24 TERED OR LICENSED ENTITIES.—In addition to the
 25 authority provided under subsection (1), no provision

1 of this title shall be construed as limiting the au-
2 thority of any State to enforce the provisions of this
3 title, as the primary enforcement authority, with re-
4 gard to any person licensed or chartered by such
5 State.”.

6 **SEC. 108. REQUIREMENTS FOR HOME LOANS.**

7 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
8 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
9 after section 129 the following new section:

10 **“§ 129A. Requirements for home loans**

11 “(a) RESTRICTIONS ON PREPAYMENT PENALTIES.—
12 Except as otherwise provided by this title, any home loan
13 may contain—

14 “(1) a provision for the imposition of a prepay-
15 ment penalty for the prepayment of the credit trans-
16 action, only if—

17 “(A) the penalty cannot be imposed if the
18 debt is accelerated solely as a result of default
19 or any other breach of the loan documents;

20 “(B) the penalty does not apply after the
21 end of the 36-month period beginning on the
22 date the transaction is consummated, or in the
23 case of an adjustable rate mortgage (ARM)
24 where the first rate adjustment date is earlier

1 than the end of such 36-month period, after the
2 adjustment date;

3 “(C) the consumer is offered a choice of
4 another similar loan without a prepayment pen-
5 alty and is advised of the lower rate or other fi-
6 nancial benefit the consumer will receive, and
7 the consequences the consumer might encoun-
8 ter, for accepting a loan with the prepayment
9 penalty; and

10 “(D) the penalty does not exceed an
11 amount equal to the 2½ percent of the original
12 principal amount of the loan.

13 “(b) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
14 ITED.—

15 “(1) IN GENERAL.—No creditor may finance,
16 directly or indirectly, in connection with any home
17 loan, any credit life, credit disability, credit unem-
18 ployment or credit property insurance, or any other
19 credit insurance, or any payments directly or indi-
20 rectly for any debt cancellation or suspension agree-
21 ment or contract, except that insurance premiums or
22 debt cancellation or suspension fees calculated and
23 paid in full on a monthly basis shall not be consid-
24 ered financed by the creditor.

1 “(2) CREDIT INSURANCE DEFINED.—For pur-
2 poses of this subsection, the term ‘credit insurance’
3 means a policy of insurance that insures, guarantees
4 or indemnifies the creditor, as the primary bene-
5 ficiary, for the repayment of the outstanding balance
6 of the loan against death, illness, accident, disability,
7 loss of property, or unemployment of the consumer.

8 “(c) LATE FEES PROHIBITED.—

9 “(1) IN GENERAL.—Except as otherwise pro-
10 vided by this title, any home loan may contain a pro-
11 vision for the imposition of unanticipated late pay-
12 ment, only if the late-payment fee—

13 “(A) is not in excess of 5 percent of the
14 amount of the scheduled payment past due;

15 “(B) may only be assessed on a payment
16 past due for 15 days or more; and

17 “(C) may not be charged more than once
18 with respect to a single late payment.”.

19 “(2) LIMITATIONS.—If a payment is otherwise
20 a full payment for the applicable period and is paid
21 on its due date or within an applicable grace period,
22 and the only delinquency or insufficiency of payment
23 is attributable to any late fee or delinquency charge
24 assessed on any earlier payment, no late fee or delin-
25 quency charge may be imposed on such payment.

1 “(d) STEERING PROHIBITED.—

2 “(1) CREDITORS.—

3 “(A) IN GENERAL.—A creditor who origi-
4 nates a home loan shall not knowingly or inten-
5 tionally steer or direct a consumer to accept a
6 home loan with a risk grade less favorable than
7 the risk grade that the consumer would qualify
8 for based on the then-current underwriting
9 guidelines of the creditor or its affiliates, con-
10 sidering the information known to that creditor,
11 including, but not limited to, the consumer’s
12 stated objectives and other information provided
13 by the consumer.

14 “(B) EXCEPTION.—A creditor does not
15 violate this section by offering the consumer a
16 home loan for which the price (including the
17 rate) or the risk grade is based on the par-
18 ticular origination channel used by the con-
19 sumer (e.g., internet, retail, broker, or cor-
20 respondent), even if the consumer might get a
21 lower price or a lower risk grade had the con-
22 sumer used a different origination channel of
23 that creditor.

24 “(C) DEFINITION.—For purposes of this
25 section, the term ‘risk grade’ means the credi-

1 tor’s determination of the risk involved in mak-
2 ing the home loan, considering both the credit
3 risk related to the consumer and the risk re-
4 lated to the specific loan product.

5 “(D) RESCISSION OR REFORMATION.—

6 “(i) IN GENERAL.—A creditor found
7 by a preponderance of the evidence to have
8 violated subparagraph (A) shall, if the
9 creditor is the holder of the obligation, at
10 the consumer’s option—

11 “(I) rescind the loan in accord-
12 ance with the procedures contained in
13 section 125(b) and 125(f); or

14 “(II) rewrite the loan into a loan
15 at the risk grade and pricing that the
16 consumer would have originally re-
17 ceived but for the violation.

18 “(ii) RESTITUTION.—In addition to
19 the action required under clause (i)(II)
20 with respect to a creditor, or in the case of
21 a creditor who is not the holder of the obli-
22 gation and has been found by a preponder-
23 ance of the evidence to have violated sub-
24 paragraph (A), such creditor shall make
25 appropriate restitution to the consumer of

1 all fees, interest, or other charges paid by
2 the consumer above those that would have
3 been paid had the loan not been originated
4 at the less favorable risk grade.

5 “(2) BROKERS.—

6 “(A) IN GENERAL.—A broker who is not a
7 creditor shall not knowingly or intentionally
8 steer or direct a consumer to accept a home
9 loan offered by a creditor with a risk grade that
10 is less favorable than the risk grade that the
11 consumer would qualify for on a home loan of-
12 fered by the creditors or their affiliates with
13 whom the broker regularly does business and
14 for which the consumer would qualify for based
15 on the then-current underwriting guidelines of
16 such creditors or their affiliates.

17 “(B) CREDITOR LIABILITY.—A creditor
18 shall have no liability under subparagraph (2)
19 unless the creditor had actual knowledge of the
20 broker’s violation.

21 “(C) PENALTY.—A broker who knowingly
22 or intentionally violates this section shall be lia-
23 ble to the consumer for an amount equal to the
24 sum of \$5,000 and the consumer’s actual finan-

1 cial damages and reasonable attorney’s fees and
2 court costs.

3 “(e) CREDIT REPORTING REQUIREMENTS.—

4 “(1) IN GENERAL.—Each creditor who enters
5 into a home loan, and each successor, assignee or
6 servicer to such creditor with respect to such loan
7 shall report monthly the complete payment history,
8 favorable and unfavorable, of the obligor with re-
9 spect to such transaction to a consumer reporting
10 agency that compiles and maintains files on con-
11 sumers on a nationwide basis, while such transaction
12 is in effect.

13 “(2) EXCEPTION FOR SHORT-TERM HOLD-
14 ERS.—Paragraph (1) shall not apply to any person
15 who holds a home loan for less than 90 days.

16 “(3) EXCEPTION FOR CERTAIN CIR-
17 CUMSTANCES.—Paragraph (1) shall not apply in
18 connection with a loan forbearance or workout of a
19 loan in default or settlement of a dispute or con-
20 sumer complaint.

21 “(4) REGULATIONS.—The Board may, by regu-
22 lation or order, exempt from or defer reporting by
23 other entities not listed in paragraph (2), and ex-
24 empt or defer reporting under other circumstances
25 not listed in paragraph (3).”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 2 of the Truth in Lending Act is amended
3 by inserting after the item relating to section 129 the fol-
4 lowing new item:

“129A. Requirements for Home Loans.”.

5 **SEC. 109. AMENDMENTS TO DISCLOSURE GUIDELINES.**

6 Section 105 of the Truth in Lending Act (15 U.S.C.
7 1604) is amended by striking paragraph (a) and inserting
8 the following new paragraph:

9 “(a) The Board shall prescribe regulations to carry
10 out the purposes of this title. These regulations may con-
11 tain such classifications, differentiations, or other provi-
12 sions, and may provide for such adjustments and excep-
13 tions for any class of transactions, as in the judgment of
14 the Board are necessary or proper to effectuate the pur-
15 poses of this title, to prevent circumvention or evasion
16 thereof, or to facilitate compliance therewith.”.

17 **SEC. 110. REGULATIONS.**

18 Notwithstanding any provision of the Truth in Lend-
19 ing Act, the Board of Governors of the Federal Reserve
20 System shall—

21 (1) prescribe such regulations implementing
22 this title and the amendments made by this title as
23 the Board may determine to be appropriate; and

24 (2) publish such regulations in final form in the
25 Federal Register before the end of the 6-month pe-

1 riod beginning on the date of the enactment of this
2 Act.

3 **SEC. 111. EFFECTIVE DATES.**

4 (a) IN GENERAL.—This title, and the amendments
5 made by this title, shall take effect at the end of the 6-
6 month period beginning on the date of the enactment of
7 this Act.

8 (b) PENDING APPLICATIONS.—This title, and the
9 amendments made by this title, shall not apply with re-
10 spect to applications for consumer credit transactions re-
11 ceived prior to the effective date of this Act.

12 **TITLE II—HOUSING**
13 **COUNSELING**

14 **Subtitle A—Consumer Counseling**

15 **SEC. 201. CONSUMER COUNSELING REQUIREMENTS.**

16 Section 129 of the Truth in Lending Act (15 U.S.C.
17 1639) is amended by inserting after subsection (x) (as
18 added by section 103(r) of this Act) the following:

19 “(y) CONSUMER COUNSELING REQUIREMENTS.—

20 “(1) IN GENERAL.—A creditor may not extend
21 any credit in the form of a high-cost home loan to
22 any consumer unless the creditor has provided to the
23 consumer, at such time before the consummation of
24 the mortgage and in such manner as the Board shall
25 provide by regulation—

1 “(A) a separate written statement recom-
2 mending that the consumer take advantage of
3 available home ownership or credit counseling
4 services before agreeing to the terms of any
5 high-cost home loan; and

6 “(B) a written statement containing the
7 names, addresses and telephone numbers of
8 counseling agencies or programs reasonably
9 available to the consumer that have been cer-
10 tified or approved and made publicly available
11 by the Secretary of Housing and Urban Devel-
12 opment, a State housing finance authority (as
13 defined in section 1301 of the Financial Institu-
14 tions Reform, Recovery, and Enforcement Act of
15 1989), or the agency referred to in subsection
16 (a) or (c) of section 108 with jurisdiction over
17 the creditor as qualified to provide counseling
18 on—

19 “(i) the advisability of a high-cost
20 home loan transaction; and

21 “(ii) the appropriateness of a high-
22 cost home loan for the consumer.

23 “(2) COMPLETE AND UPDATED LISTS RE-
24 QUIRED.—A creditor shall be deemed to be in com-
25 pliance with the requirements of this subsection if

1 the creditor provides the consumer with a reasonably
2 complete or updated list of counseling agencies re-
3 quired by section 5(a) of the Real Estate Settlement
4 Procedures Act of 1974.”.

5 **Subtitle B—Expanded Housing** 6 **Counseling Opportunities**

7 **SEC. 211. SHORT TITLE.**

8 This subtitle may be cited as the “Expanding Hous-
9 ing Opportunities Through Education and Counseling
10 Act”.

11 **SEC. 212. ESTABLISHMENT OF OFFICE OF HOUSING COUN-** 12 **SELING.**

13 Section 4 of the Department of Housing and Urban
14 Development Act (42 U.S.C. 3533) is amended by adding
15 at the end the following new subsection:

16 “(g) OFFICE OF HOUSING COUNSELING.—

17 “(1) ESTABLISHMENT.—There is established,
18 in the Office of the Secretary, the Office of Housing
19 Counseling.

20 “(2) DIRECTOR.—There is established the posi-
21 tion of Director of Housing Counseling. The Direc-
22 tor shall be the head of the Office of Housing Coun-
23 seling and shall be appointed by the Secretary. Such
24 position shall be a career-reserved position in the
25 Senior Executive Service.

1 “(3) FUNCTIONS.—

2 “(A) IN GENERAL.—The Director shall
3 have ultimate responsibility within the Depart-
4 ment, except for the Secretary, for all activities
5 and matters relating to homeownership coun-
6 seling and rental housing counseling, includ-
7 ing—

8 “(i) research, grant administration,
9 public outreach, and policy development re-
10 lating to such counseling; and

11 “(ii) establishment, coordination, and
12 administration of all regulations, require-
13 ments, standards, and performance meas-
14 ures under programs and laws adminis-
15 tered by the Department that relate to
16 housing counseling, homeownership coun-
17 seling (including maintenance of homes),
18 mortgage-related counseling (including
19 home equity conversion mortgages and
20 credit protection options to avoid fore-
21 closure), and rental housing counseling, in-
22 cluding the requirements, standards, and
23 performance measures relating to housing
24 counseling.)

1 “(B) SPECIFIC FUNCTIONS.—The Director
2 shall carry out the functions assigned to the Di-
3 rector and the Office under this section and any
4 other provisions of law. Such functions shall in-
5 clude establishing rules necessary for—

6 “(i) the counseling procedures under
7 section 106(h)(1) of the Housing and
8 Urban Development Act of 1968 (12
9 U.S.C. 1701x(h)(1));

10 “(ii) carrying out all other functions
11 of the Secretary under section 106(h) of
12 the Housing and Urban Development Act
13 of 1968, including the establishment, oper-
14 ation, and publication of the availability of
15 the toll-free telephone number under para-
16 graph (2) of such section;

17 “(iii) carrying out section 5 of the
18 Real Estate Settlement Procedures Act of
19 1974 (12 U.S.C. 2604) for home buying
20 information booklets prepared pursuant to
21 such section;

22 “(iv) carrying out the certification
23 program under section 106(e) of the Hous-
24 ing and Urban Development Act of 1968
25 (12 U.S.C. 1701x(e));

1 “(v) carrying out the assistance pro-
2 gram under section 106(a)(4) of the Hous-
3 ing and Urban Development Act of 1968,
4 including criteria for selection of applica-
5 tions to receive assistance;

6 “(vi) carrying out any functions re-
7 garding abusive, deceptive, or unscrupulous
8 lending practices relating to residential
9 mortgage loans that the Secretary con-
10 siders appropriate, which shall include con-
11 ducting the study under section 216 of the
12 Expanding Housing Opportunities
13 Through Education and Counseling Act;

14 “(vii) providing for operation of the
15 advisory committee established under para-
16 graph (4) of this subsection; and

17 “(viii) collaborating with community-
18 based organizations with expertise in the
19 field of housing counseling.

20 “(4) ADVISORY COMMITTEE.—

21 “(A) IN GENERAL.—The Secretary shall
22 appoint an advisory committee to provide advice
23 and oversight regarding the carrying out of the
24 functions of the Director.

1 “(B) MEMBERS.—Such advisory committee
2 shall consist of not more than 12 individuals,
3 and the membership of the committee shall
4 equally represent all aspects of the mortgage
5 and real estate industry, including consumers.

6 “(C) TERMS.—Except as provided in sub-
7 paragraph (D), each member of the advisory
8 committee shall be appointed for a term of
9 three years. Members may be reappointed at
10 the discretion of the Secretary.

11 “(D) TERMS OF INITIAL APPOINTEES.—As
12 designated by the Secretary at the time of ap-
13 pointment, of the members first appointed to
14 the advisory committee, four shall be appointed
15 for a term of one year and four shall be ap-
16 pointed for a term of two years.

17 “(E) PROHIBITION OF PAY; TRAVEL EX-
18 PENSES.—Members of the advisory committee
19 shall serve without pay, but shall receive travel
20 expenses, including per diem in lieu of subsist-
21 ence, in accordance with applicable provisions
22 under subchapter I of chapter 57 of title 5,
23 United States Code.

1 “(F) ADVISORY ROLE ONLY.—The advi-
2 sory committee shall have no role in reviewing
3 or awarding housing counseling grants.

4 “(5) SCOPE OF HOMEOWNERSHIP COUN-
5 SELING.—In carrying out the responsibilities of the
6 Director, the Director shall ensure that homeowner-
7 ship counseling provided by, in connection with, or
8 pursuant to any function, activity, or program of the
9 Department addresses the entire process of home-
10 ownership, including the decision to purchase a
11 home, the selection and purchase of a home, issues
12 arising during or affecting the period of ownership
13 of a home (including refinancing, default and fore-
14 closure, and other financial decisions), and the sale
15 or other disposition of a home.”.

16 **SEC 213. COUNSELING PROCEDURES.**

17 (a) IN GENERAL.—Section 106 of the Housing and
18 Urban Development Act of 1968 (12 U.S.C. 1701x), as
19 amended by the preceding provisions of this title, is fur-
20 ther amended by adding at the end the following new sub-
21 section:

22 “(h) PROCEDURES AND ACTIVITIES.—

23 “(1) COUNSELING PROCEDURES.—

24 “(A) IN GENERAL.—The Secretary shall
25 establish, coordinate, and monitor the adminis-

1 tration by the Department of Housing and
2 Urban Development of the counseling proce-
3 dures for homeownership counseling and rental
4 housing counseling provided in connection with
5 any program of the Department, including all
6 requirements, standards, and performance
7 measures that relate to homeownership and
8 rental housing counseling.

9 “(B) HOMEOWNERSHIP COUNSELING.—

10 For purposes of this subsection and as used in
11 the provisions referred to in this subparagraph,
12 the term ‘homeownership counseling’ means
13 counseling related to homeownership and resi-
14 dential mortgage loans. Such term includes
15 counseling related to homeownership and resi-
16 dential mortgage loans that is provided pursu-
17 ant to—

18 “(i) section 105(a)(20) of the Housing
19 and Community Development Act of 1974
20 (42 U.S.C. 5305(a)(20));

21 “(ii) in the United States Housing
22 Act of 1937—

23 “(I) section 9(e) (42 U.S.C.
24 1437g(e));

1 “(II) section 8(y)(1)(D) (42
2 U.S.C. 1437f(y)(1)(D));

3 “(III) section 18(a)(4)(D) (42
4 U.S.C. 1437p(a)(4)(D));

5 “(IV) section 23(c)(4) (42 U.S.C.
6 1437u(c)(4));

7 “(V) section 32(e)(4) (42 U.S.C.
8 1437z-4(e)(4));

9 “(VI) section 33(d)(2)(B) (42
10 U.S.C. 1437z-5(d)(2)(B));

11 “(VII) sections 302(b)(6) and
12 303(b)(7) (42 U.S.C. 1437aaa-
13 1(b)(6), 1437aaa-2(b)(7)); and

14 “(VIII) section 304(c)(4) (42
15 U.S.C. 1437aaa-3(c)(4));

16 “(iii) section 302(a)(4) of the Amer-
17 ican Homeownership and Economic Oppor-
18 tunity Act of 2000 (42 U.S.C. 1437f note);

19 “(iv) sections 233(b)(2) and 258(b) of
20 the Cranston-Gonzalez National Affordable
21 Housing Act (42 U.S.C. 12773(b)(2),
22 12808(b));

23 “(v) this section and section 101(e) of
24 the Housing and Urban Development Act
25 of 1968 (12 U.S.C. 1701x, 1701 w(e));

1 “(vi) section 220(d)(2)(G) of the Low-
2 Income Housing Preservation and Resident
3 Homeownership Act of 1990 (12 U.S.C.
4 4110(d)(2)(G));

5 “(vii) sections 422(b)(6), 423(b)(7),
6 424(c)(4), 442(b)(6), and 443(b)(6) of the
7 Cranston-Gonzalez National Affordable
8 Housing Act (42 U.S.C. 12872(b)(6),
9 12873(b)(7), 12874(c)(4), 12892(b)(6),
10 and 12893(b)(6));

11 “(viii) section 491(b)(1)(F)(iii) of the
12 McKinney-Vento Homeless Assistance Act
13 (42 U.S.C. 11408(b)(1)(F)(iii));

14 “(ix) sections 202(3) and
15 810(b)(2)(A) of the Native American
16 Housing and Self-Determination Act of
17 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

18 “(x) in the National Housing Act—

19 “(I) in section 203 (12 U.S.C.
20 1709), the penultimate undesignated
21 paragraph of paragraph (2) of sub-
22 section (b), subsection (c)(2)(A), and
23 subsection (r)(4);

1 “(II) subsections (a) and (c)(3)
2 of section 237 (12 U.S.C. 1715z-2);
3 and

4 “(III) subsections (d)(2)(B) and
5 (m)(1) of section 255 (12 U.S.C.
6 1715z-20);

7 “(xi) section 502(h)(4)(B) of the
8 Housing Act of 1949 (42 U.S.C.
9 1472(h)(4)(B)); and

10 “(xii) section 508 of the Housing and
11 Urban Development Act of 1970 (12
12 U.S.C. 1701z-7).

13 “(C) RENTAL HOUSING COUNSELING.—
14 For purposes of this subsection, the term ‘rent-
15 al housing counseling’ means counseling related
16 to rental of residential property, which may in-
17 clude counseling regarding future homeown-
18 ership opportunities and providing referrals for
19 renters and prospective renters to entities pro-
20 viding counseling and shall include counseling
21 related to such topics that is provided pursuant
22 to—

23 “(i) section 105(a)(20) of the Housing
24 and Community Development Act of 1974
25 (42 U.S.C. 5305(a)(20));

1 “(ii) in the United States Housing
2 Act of 1937—

3 “(I) section 9(e) (42 U.S.C.
4 1437g(e));

5 “(II) section 18(a)(4)(D) (42
6 U.S.C. 1437p(a)(4)(D));

7 “(III) section 23(c)(4) (42
8 U.S.C. 1437u(c)(4));

9 “(IV) section 32(e)(4) (42 U.S.C.
10 1437z-4(e)(4));

11 “(V) section 33(d)(2)(B) (42
12 U.S.C. 1437z-5(d)(2)(B)); and

13 “(VI) section 302(b)(6) (42
14 U.S.C. 1437aaa-1(b)(6));

15 “(iii) section 233(b)(2) of the Cran-
16 ston-Gonzalez National Affordable Housing
17 Act (42 U.S.C. 12773(b)(2));

18 “(iv) section 106 of the Housing and
19 Urban Development Act of 1968 (12
20 U.S.C. 1701x);

21 “(v) section 422(b)(6) of the Cran-
22 ston-Gonzalez National Affordable Housing
23 Act (42 U.S.C. 12872(b)(6));

1 “(vi) section 491(b)(1)(F)(iii) of the
2 McKinney-Vento Homeless Assistance Act
3 (42 U.S.C. 11408(b)(1)(F)(iii));

4 “(vii) sections 202(3) and
5 810(b)(2)(A) of the Native American
6 Housing and Self-Determination Act of
7 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
8 and

9 “(viii) the rental assistance program
10 under section 8 of the United States Hous-
11 ing Act of 1937 (42 U.S.C. 1437f).

12 “(2) TOLL-FREE TELEPHONE NUMBER AND
13 WEB SITE.—The Secretary shall provide for the es-
14 tablishment, operation, and publication of a toll-free
15 telephone number and a World Wide Web site
16 through which persons interested in homeownership
17 or rental housing counseling services may locate and
18 obtain names and contact information of persons
19 and organizations certified under section 106(e) of
20 the Housing and Urban Development Act of 1968 to
21 provide such services.

22 “(3) STANDARDS FOR MATERIALS.—The Sec-
23 retary, in conjunction with the advisory committee
24 established under subsection (g)(4), shall establish
25 standards for materials and forms to be used, as ap-

1 appropriate, by organizations providing homeownership
2 counseling services, including any recipients of as-
3 sistance pursuant to subsection (a)(4).

4 “(4) MORTGAGE SOFTWARE SYSTEMS.—

5 “(A) CERTIFICATION.—The Secretary shall
6 provide for the certification of various computer
7 software programs for consumers to use in eval-
8 uating different residential mortgage loan pro-
9 posals. The Secretary shall require, for such
10 certification, that the mortgage software sys-
11 tems take into account—

12 “(i) the consumer’s financial situation
13 and the cost of maintaining a home, in-
14 cluding insurance, taxes, and utilities;

15 “(ii) the amount of time the consumer
16 expects to remain in the home or expected
17 time to maturity of the loan;

18 “(iii) such other factors as the Sec-
19 retary considers appropriate to assist the
20 consumer in evaluating whether to pay
21 points, to lock in an interest rate, to select
22 an adjustable or fixed rate loan, to select
23 a conventional or government-insured or
24 guaranteed loan and to make other choices
25 during the loan application process.

1 If the Secretary determines that available exist-
2 ing software is inadequate to assist consumers
3 during the residential mortgage loan application
4 process, the Secretary shall arrange for the de-
5 velopment by private sector software companies
6 of new mortgage software systems that met the
7 Secretary's specifications.

8 “(B) USE AND INITIAL AVAILABILITY.—
9 Such certified computer software programs
10 shall be used to supplement, not replace, hous-
11 ing counseling. The Secretary shall provide that
12 such programs are initially used only in connec-
13 tion with the assistance of housing counselors
14 certified pursuant to subsection (e).

15 “(C) AVAILABILITY.—After a period of ini-
16 tial availability under subparagraph (B) as the
17 Secretary considers appropriate, the Secretary
18 shall take reasonable steps to make mortgage
19 software systems certified pursuant to this
20 paragraph widely available through the Internet
21 and at public locations, including public librar-
22 ies, senior-citizen centers, public housing sites,
23 offices of public housing agencies that admin-
24 ister rental housing assistance vouchers, and
25 housing counseling centers.

1 “(5) OUTREACH TO VULNERABLE POPU-
2 LATIONS.—The Secretary shall develop a multimedia
3 outreach program designed to make elderly persons,
4 persons who face language barriers, low-income per-
5 sons, and other potentially vulnerable consumers
6 aware that it is advisable, before seeking a residen-
7 tial mortgage loan, to obtain homeownership coun-
8 seling from an unbiased and reliable source and that
9 such homeownership counseling is available, includ-
10 ing through programs of the Department of Housing
11 and Urban Development.

12 “(6) EDUCATION PROGRAMS.—The Secretary
13 shall provide advice and technical assistance to
14 States, units of general local government, and non-
15 profit organizations regarding the establishment and
16 operation of, including assistance with the develop-
17 ment of content and materials for, educational pro-
18 grams to inform and educate consumers, particularly
19 those most vulnerable with respect to residential
20 mortgage loans (such as elderly persons, persons
21 facing language barriers, low-income persons, and
22 other potentially vulnerable consumers), regarding
23 home mortgages, mortgage refinancing, home equity
24 loans, and home repair loans.”.

1 (b) CONFORMING AMENDMENTS TO GRANT PRO-
 2 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
 3 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
 4 Urban Development Act of 1968 (12 U.S.C.
 5 1701x(c)(5)(A)(ii)) is amended—

6 (1) in subclause (II), by striking “and” at the
 7 end;

8 (2) in subclause (III) by striking the period at
 9 the end and inserting “; and”; and

10 (3) by inserting after subclause (III) the fol-
 11 lowing new subclause:

12 “(IV) notify the housing or mort-
 13 gage applicant of the availability of
 14 mortgage software systems provided
 15 pursuant to subsection (h)(4).”.

16 **SEC. 214. GRANTS FOR HOUSING COUNSELING ASSIST-**
 17 **ANCE.**

18 Section 106(a) of the Housing and Urban Develop-
 19 ment Act of 1968 (12 U.S.C. 1701x(a)(3)) is amended
 20 by adding at the end the following new paragraph:

21 “(4) HOMEOWNERSHIP AND RENTAL COUN-
 22 SELING ASSISTANCE.—

23 “(A) IN GENERAL.—The Secretary shall
 24 make financial assistance available under this
 25 paragraph to States, units of general local gov-

1 ernments, and nonprofit organizations providing
2 homeownership or rental counseling (as such
3 terms are defined in subsection (h)(1)).

4 “(B) QUALIFIED ENTITIES.—The Secretary
5 shall establish standards and guidelines for eli-
6 gibility of organizations (including govern-
7 mental and nonprofit organizations) to receive
8 assistance under this paragraph.

9 “(C) DISTRIBUTION.—Assistance made avail-
10 able under this paragraph shall be distributed a
11 manner that encourages efficient and successful
12 counseling programs.

13 “(D) AUTHORIZATION OF APPROPRIA-
14 TIONS.—There are authorized to be appro-
15 priated \$75,000,000 for each of fiscal years
16 2006 through 2009 for—

17 “(i) the operations of the Office of
18 Housing Counseling of the Department of
19 Housing and Urban Development;

20 “(ii) the responsibilities of the Secretary
21 under paragraphs (2) through (6) of sub-
22 section (h); and

23 “(iii) assistance pursuant to this para-
24 graph for entities providing homeownership
25 and rental counseling.”.

1 **SEC. 215. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
2 **SELORS UNDER HUD PROGRAMS.**

3 Section 106(e) of the Housing and Urban Development
4 Act of 1968 (12 U.S.C. 1701x(e)) is amended—

5 (1) by striking paragraph (1) and inserting the
6 following new paragraph:

7 “(1) REQUIREMENT FOR ASSISTANCE.—An orga-
8 nization may not receive assistance for counseling
9 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
10 (e), or (d) of this section, or under section 101(e),
11 unless the organization, or the individuals through
12 which the organization provides such counseling, has
13 been certified by the Secretary under this subsection
14 as competent to provide such counseling.”;

15 (2) in paragraph (2)—

16 (A) by inserting “and for certifying or-
17 ganizations” before the period at the end
18 of the first sentence; and

19 (B) in the second sentence by striking
20 “for certification” and inserting “, for cer-
21 tification of an organization, that each in-
22 dividual through which the organization
23 provides counseling shall demonstrate, and,
24 for certification of an individual.”;

25 (3) in paragraph (3), by inserting “organizations
26 and” before “individuals”;

1 (4) by redesignating paragraph (3) as paragraph
2 (5); and

3 (5) by inserting after paragraph (2) the following
4 new paragraphs:

5 “(3) REQUIREMENT UNDER HUD PROGRAMS.—
6 Any homeownership counseling or rental housing
7 counseling (as such terms are defined in subsection
8 (h)(1)) required under, or provided in connection
9 with, any program administered by the Department
10 of Housing and Urban Development shall be pro-
11 vided only by organizations or counselors certified by
12 the Secretary under this subsection as competent to
13 provide such counseling.

14 “(4) OUTREACH.—The Secretary shall take such
15 actions as the Secretary considers appropriate to en-
16 sure that individuals and organizations providing
17 homeownership or rental housing counseling are
18 aware of the certification requirements and stand-
19 ards of this subsection and of the training and cer-
20 tification programs under subsection (f).”.

21 **SEC. 216. STUDY OF DEFAULTS AND FORECLOSURES.**

22 The Secretary of Housing and Urban Development shall
23 conduct an extensive study of the primary causes of de-
24 fault and foreclosure of home loans, using as much empir-
25 ical data as are available. The study shall also examine

1 the role of escrow accounts in helping prime and nonprime
2 borrowers to avoid defaults and foreclosures. Not later
3 than 12 months after the date of the enactment of this
4 Act, the Secretary shall submit to the Congress a prelimi-
5 nary report regarding the study. Not later than 24 months
6 after such date of enactment, the Secretary shall submit
7 a final report regarding the results of the study, which
8 shall include any recommended legislation relating to the
9 study, and recommendations for best practices and for a
10 process to identify populations that need counseling the
11 most.

12 **SEC. 217. DEFINITIONS FOR COUNSELING-RELATED PRO-**
13 **GRAMS.**

14 Section 106 of the Housing and Urban Development
15 Act of 1968 (12 U.S.C.1701x), as amended by the pre-
16 ceding provisions of this title, is further amended by add-
17 ing at the end the following new subsection:

18 “(i) DEFINITIONS.—For purposes of this section:

19 “(1) NONPROFIT ORGANIZATION.—The term
20 “nonprofit organization” has the meaning given
21 such term in section 104(5) of the Cranston-Gon-
22 zalez National Affordable Housing Act (42 U.S.C.
23 12704(5)), except that subparagraph (D) of such
24 section shall not apply for purposes of this section.

1 let in various languages and cultural styles, as the Sec-
2 retary determines to be appropriate, so that the booklet
3 is understandable and accessible to homebuyers of dif-
4 ferent ethnic and cultural backgrounds. The Secretary
5 shall distribute such booklets to all lenders that make fed-
6 erally related mortgage loans. The Secretary shall also dis-
7 tribute to such lenders lists, organized by location, of
8 homeownership counselors certified under section 106(e)
9 of the Housing and Urban Development Act of 1968 (12
10 U.S.C. 1701x(e)) for use in complying with the require-
11 ment under subsection (c) of this section.

12 “(b) CONTENTS.—Each booklet shall be in such form
13 and detail as the Secretary shall prescribe and, in addition
14 to such other information as the Secretary may provide,
15 shall include in plain and understandable language the fol-
16 lowing information:

17 “(1) A description and explanation of the na-
18 ture and purpose of the costs incident to a real es-
19 tate settlement or a federally related mortgage loan.
20 The description and explanation shall provide gen-
21 eral information about the mortgage process as well
22 as specific information concerning, at a minimum—

23 “(A) balloon payments;

24 “(B) prepayment penalties; and

1 “(C) the trade-off between closing costs
2 and the interest rate over the life of the loan.

3 “(2) An explanation and sample of the uniform
4 settlement statement required by section 4.

5 “(3) A list and explanation of lending practices,
6 including those prohibited by the Truth in Lending
7 Act or other applicable Federal law, and of other un-
8 fair practices and unreasonable or unnecessary
9 charges to be avoided by the prospective buyer with
10 respect to a real estate settlement.

11 “(4) A list and explanation of questions a con-
12 sumer obtaining a federally related mortgage loan
13 should ask regarding the loan, including whether the
14 consumer will have the ability to repay the loan,
15 whether the consumer sufficiently shopped for the
16 loan, whether the loan terms include prepayment
17 penalties or balloon payments, and whether the loan
18 will benefit the borrower.

19 “(5) An explanation of the right of rescission as
20 to certain transactions provided by sections 125 and
21 129 of the Truth in Lending Act.

22 “(6) A brief explanation of the nature of a vari-
23 able rate mortgage and a reference to the booklet
24 entitled ‘Consumer Handbook on Adjustable Rate
25 Mortgages’, published by the Board of Governors of

1 the Federal Reserve System pursuant to section
2 226.19(b)(1) of title 12, Code of Federal Regula-
3 tions, or to any suitable substitute of such booklet
4 that such Board of Governors may subsequently
5 adopt pursuant to such section.

6 “(7) A brief explanation of the nature of a
7 home equity line of credit and a reference to the
8 pamphlet required to be provided under section
9 127A of the Truth in Lending Act.

10 “(8) Information about homeownership coun-
11 seling services made available pursuant to section
12 106(a)(4) of the Housing and Urban Development
13 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
14 ommendation that the consumer use such services,
15 and notification that a list of certified providers of
16 homeownership counseling in the area, and their
17 contact information, is available.

18 “(9) An explanation of the nature and purpose
19 of escrow accounts when used in connection with
20 loans secured by residential real estate and the re-
21 quirements under section 10 of this Act regarding
22 such accounts.

23 “(10) An explanation of the choices available to
24 buyers of residential real estate in selecting persons

1 to provide necessary services incidental to a real es-
2 tate settlement.

3 “(11) An explanation of a consumer’s respon-
4 sibilities, liabilities, and obligations in a mortgage
5 transaction.

6 “(12) An explanation of the nature and purpose
7 of real estate appraisals, including the difference be-
8 tween an appraisal and a home inspection.

9 “(13) Notice that the Office of Housing of the
10 Department of Housing and Urban Development has
11 made publicly available a brochure regarding loan
12 fraud and a World Wide Web address and toll-free
13 telephone number for obtaining the brochure.

14 The booklet prepared pursuant to this section shall take
15 into consideration differences in real estate settlement pro-
16 cedures that may exist among the several States and terri-
17 tories of the United States and among separate political
18 subdivisions within the same State and territory.”;

19 (3) in subsection (c), by striking the last sen-
20 tence and inserting the following new sentence:
21 “Each lender shall also include with the booklet a
22 reasonably complete or updated list of homeowner-
23 ship counselors who are certified pursuant to section
24 106(e) of the Housing and Urban Development Act

1 of 1968 (12 U.S.C. 1701x(e)) and located in the
2 area of the lender.”; and

3 (4) in subsection (d), by inserting after the pe-
4 riod at the end of the first sentence the following:
5 “The lender shall provide the HUD-issued booklet in
6 the version that is most appropriate for the person
7 receiving it.”.

8 **SEC. 219. OPTION FOR NOTICE OF FORECLOSURE PREVEN-**
9 **TION COUNSELING AVAILABILITY.**

10 Section 4 of the Real Estate Settlement Procedures
11 Act of 1974 (12 U.S.C. 2603) is amended by adding at
12 the end the following new subsection:

13 “(c) **OPTION FOR NOTICE OF FORECLOSURE PRE-**
14 **VENTION COUNSELING AVAILABILITY.—**

15 “(1) **OPTION.—**In connection with any federally
16 related mortgage loan, the mortgagee shall provide
17 the borrower, at the time of the execution of the
18 mortgage, an optional written agreement that, if
19 signed by the borrower, allows, but does not require,
20 the mortgagee to provide the notice described in
21 paragraph (2) to a homeownership counseling entity
22 that has agreed to provide the notice and counseling
23 required under paragraph (3) and is approved by the
24 Secretary.

1 “(2) NOTICE TO COUNSELING AGENCY.—The
2 notice described in this paragraph, with respect to
3 any federally related mortgage loan, is notice, pro-
4 vided at the earliest time practicable after the bor-
5 rower becomes 60 days delinquent with respect to
6 any payment due under the mortgage, that the bor-
7 rower is so delinquent and of how to contact the bor-
8 rower. Such notice may only be provided once with
9 respect to each delinquency period for a mortgage.

10 “(3) NOTICE TO MORTGAGOR.—Upon notice
11 from a mortgagee that a borrower is 60 days delin-
12 quent with respect to payments due under the mort-
13 gage, the homeownership counseling entity shall at
14 the earliest time practicable notify the borrower of
15 such delinquency, that the entity makes available
16 foreclosure prevention counseling that may assist the
17 mortgagor in resolving the delinquency, and of how
18 to contact the entity to arrange for such counseling.

19 “(4) ABILITY TO CURE.—Failure to provide the
20 optional written agreement required under para-
21 graph (1) may be collected by sending such agree-
22 ment to the borrower not later than the earliest time
23 practicable after the mortgagor first becomes 60
24 days delinquent with respect to payments due under
25 the mortgage. Mortgage insurance, if any, provided

1 in connection with such federally related mortgage
2 loan may not be terminated and penalties for such
3 failure may not be prospectively or retroactively im-
4 posed if such failure is corrected in accordance with
5 this paragraph.

6 “(5) LIMITATION ON LIABILITY OF MORT-
7 GAGEE.—A mortgagee shall not incur any liability or
8 penalties for any failure of a homeownership coun-
9 seling entity to provide notice under paragraph (3).

10 “(6) NO PRIVATE RIGHT OF ACTION.—This
11 subsection shall not create any private right of ac-
12 tion on behalf of the borrower.

13 “(7) DEFINITIONS.—For purposes of this sub-
14 section, the following definitions shall apply:

15 “(A) DELINQUENCY PERIOD.—The term
16 “delinquency period” means, with respect to a
17 mortgage, a period that begins upon the bor-
18 rower becoming delinquent with respect to pay-
19 ments due under the mortgage and ends upon
20 the first subsequent occurrence of such pay-
21 ments under the mortgage becoming current or
22 the property subject to the mortgage being fore-
23 closed or otherwise disposed of.

24 “(B) HOMEOWNERSHIP COUNSELING ENTI-
25 TY.—The term ‘homeownership counseling enti-

1 ty' means any State, unit of general local gov-
2 ernment, or nonprofit organization that pro-
3 vides homeownership counseling (as defined in
4 section 106(h)(1)(B) of the Housing and Urban
5 Development Act of 1968).”.

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